

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

<b>MICHAEL SCOTT RUSH, 1259668,</b>	)	
<b>Petitioner,</b>	)	
	)	
<b>v.</b>	)	<b>No. 3:07-CV-0390-D</b>
	)	
<b>NATHANIEL QUARTERMAN, Director,</b>	)	
<b>Texas Department of Criminal Justice,</b>	)	
<b>Correctional Institutions Division,</b>	)	
<b>Respondent.</b>	)	

**ORDER**

After conducting a *de novo* review, the court holds that the findings, conclusions, and recommendation of the magistrate judge are correct in their result, and, with the explanation that follows, they are adopted as the findings and conclusions of the court.

Considering the confusion petitioner Michael Scott Rush (“Rush”) has shown in his April 10, 2008 objections, and because the court comes up with an ending date that is one day different (but with the same result) from the one calculated by the magistrate judge, the court will restate the calculation that shows why Rush’s petition is time-barred.

Rush was convicted by guilty plea on September 15, 2004. Because Rush did not appeal, his conviction became final 30 days later, on October 15, 2004. The AEDPA one-year limitations period commenced on October 16, 2004. A period of 275 countable days elapsed until July 18, 2005, when Rush filed a petition for a writ of habeas corpus with the state court. The limitations period was tolled until May 24, 2006, when the Texas Court of Criminal Appeals denied the habeas petition without written order. The one-year limitations period started again on May 25, 2006. On August 22, 2006—the 365th countable day—the limitations period expired. Rush did not file his federal habeas petition in this court until October 11, 2006. Therefore, it is barred by limitations,

and his petition must be dismissed with prejudice where, as here, Rush has shown no basis for equitable tolling.

**SO ORDERED.**

May 2, 2008.

  
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SIDNEY A. FITZWATER  
CHIEF JUDGE